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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 14 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Petition for Rulemaking to Amend Parts) RM-9060
21 and 74 of the Commission's Rules to)
Enhance the Ability of Multipoint)
Distribution Service and Instructional)
Television Fixed Service Licensees to)
Engage in Fixed Two-Way)
Transmissions)

To: The Commission

JOINT COMMENTS OF ITFS PARTIES

Arizona State Board of Regents on behalf of the University of Arizona, Board of Regents
of the University of Wisconsin System, California State University, Calnet, Cooperating School
Districts of Greater St. Louis, Daytona Beach Community College District, Hawkeye
Community College, INTELECOM Intelligent Telecommunications, Long Beach Unified
School District, the Ohio State University, Palomar Community College District, Pasadena
Unified School District, Regents of the University of Minnesota, San Diego County
Superintendent of Schools, Santa Ana Unified School District, South Carolina Educational
Television Commission, State of Wisconsin--Educational Communications Board, St. Louis
Regional Educational and Public Television Commission and University System of the Ana G.
Mendez Educational Foundation (the "ITFS Parties"), by their counsel, submit these comments
in response to the Petition for Rulemaking filed March 14, 1997 ("Petition"), by the Wireless

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Cable Association International, Inc. and others, proposing that the FCC institute a rulemaking proceeding that would amend the rules to make possible the transmission of two-way communications on ITFS and MMDS channels.

The ITFS Parties are public and private universities and university systems, school districts, consortia of university campuses and community colleges, public broadcasters and governmental or non-profit educational telecommunications entities. Each is an experienced licensee of one or more ITFS stations providing educational services to students and other learners in schools, workplaces and homes; indeed, among the ITFS Parties are operators of some of the oldest, largest and most innovative and respected ITFS systems in the country. Since 1983, many of the ITFS Parties have consistently participated in Commission proceedings affecting the ITFS service. Their purpose in all cases has been to preserve and enhance the ability of ITFS operators to provide critical educational telecommunications services to their constituents.

The Petition

The Petition proposes that the FCC institute a proceeding to adopt rules that would allow ITFS and MDS licensees to use their 6 MHz channels for return links from receive sites or subscribers, to cellularize transmission systems, to use subchannels (multiple signals over a single 6 MHz channel) or superchannels (the transmission of a single signal over multiple adjacent 6 MHz channels), and to enhance operation of booster stations.

The Petition suggests a procedure whereby, to ease FCC licensing delays, applications for return links and their associated hubs, and for boosters, would be automatically granted after public notice unless a petition to deny is filed by a party that might experience interference.

The Petition also proposes changes to certain rules in Part 74 dealing with ITFS programming. The proposal would replace the 20 hour minimum use time and 20 hours of recapture time concept per ITFS channel with 40 hours per channel of used or reserved time. It would also permit all of an ITFS licensee's time to be used or recaptured on channels licensed to some other party in the wireless system.

Generally, the ITFS Parties support the Petition and urge the FCC to move forward with the adoption of a Notice of Proposed Rulemaking. With appropriate safeguards, the proposed rule changes that would increase the flexibility of ITFS licensees to engage in a variety of two-way voice, video and data transmissions (including high speed Internet access). This flexibility could be valuable to the delivery of educational services. Cost-effective two-way voice, video and data communications could enhance the distance learning experience by allowing it to be more truly interactive. Internet access via the 2.5 GHz band could help schools obtain services at costs far less, and speeds far greater, than can now be reasonably anticipated for many schools. The ITFS Parties caution, however, that the rules need to be implemented with due regard for ITFS licensees' ultimate control of their channels, interference protection, and the preservation of reasonable flexibility to modify ITFS facilities to meet expanding needs or changed circumstances.

Concerns of the ITFS Parties

As the Commission reviews the proposals set forth in the Petition, the ITFS Parties seek to focus its attention on certain aspects of the proposed rules that already have been drafted to accommodate their special concerns, and they feel the need ensure that the FCC notes certain other areas of concern that the FCC should address.

1. Booster Stations

For example, with respect to the proposals for booster stations, the ITFS Parties believe it is important that such facilities operating on their channels be licensed only in their names, even though the proposed rules permit facilities to be shared between ITFS and MDS booster stations. In the case of higher power boosters (operating with power greater than -9 dBW EIRP), the proposed rules clearly state that licenses would be awarded only to ITFS licensees on whose channels the boosters would operate. For lower power boosters, the rules in this respect are less clear. They seem to suggest that only a notification procedure, and not a licensing procedure, would be applied, and they would allow the notification procedure to be instituted by excess capacity lessees who have agreements with the relevant ITFS licensee.^{1/} The ITFS Parties do not object to such an approach, so long as it is clear that the operator is not able unilaterally to continue to operate the booster on the ITFS channels in the event that the agreement between the operator and the ITFS licensee expires or terminates.

The ITFS Parties also have a concern about the proposal that, within the booster service area, the booster service, and not the main station service, receives interference protection. The ITFS Parties urge the FCC to confirm that, in the event that the booster station goes off the air, the main station service once again obtains protection in the former service area of the booster station.

^{1/} The WCA has explained that these lower power devices do not need to be approved by the FCC in advance and are expected to be installed quickly when wireless cable systems find coverage gaps. The rules require only that the FCC be notified within 48 hours of installation. WCA believes that, in such circumstances, the wireless cable operator should be able to file such notifications covering all channels employed by the lower power booster as it would be difficult to require each participating ITFS or MDS licensee to join in filing notifications on such short notice.

2. Two-Way Operations

With respect to return links and response station hubs, the ITFS Parties emphasize that the proposed rules require that such facilities operating on ITFS channels be licensed only to ITFS licensees. Although the rules would allow these facilities on ITFS frequencies to be operated by wireless cable operators with the consent of the affected ITFS licensees, it is important that the ITFS licensee not lose control of its frequencies in the event the excess capacity agreement expires or terminates.

3. Processing Rules

The ITFS Parties also agree generally with the proposed processing rules for boosters and response stations. Processing delays at the FCC have been a very real problem for both ITFS applicants and for wireless cable operators. Thus, so long as it is clear that potentially affected ITFS operators be served with interference analyses, and be given 60 days to object on interference grounds, the automatic grant procedure is acceptable. However, the ITFS Parties point out that the interference issues raised by widespread use of boosters, cellularized transmission systems and two-way operations will most often be beyond the capability of ITFS licensees to evaluate. Also, the very nature of the "dependent" relationship of many ITFS licensees on their system operators, ITFS licensees may simply not be in a position to object to proposed system changes. Thus, the ITFS Parties urge that the Commission make clear that interference *actually* caused by a new booster, cellularized transmission system or response station would have to be cured, or the new facility turned off, even if no objection is filed by the affected ITFS licensee. Stated another way, the failure of an ITFS licensee to object to an

application slated for automatic grant should not be considered as a waiver of interference protection.

4. Programming on ITFS Channels

The Petition contemplates that an ITFS licensee could allow a wireless cable operator to use *all* of its ITFS channels for return links or superchannels designated for other than downstream video use, so long as the ITFS programming associated with the channels be transmitted on other channels in the system.^{2/} The ITFS Parties are concerned that, where none of a licensee's programming is transmitted on its own channels, the ITFS license could be endangered at renewal time. Proposed Section 74.931(e)(9) addresses that concern by stating that the use of channel mapping or channel loading consistent with the rules "shall not be considered adversely to the ITFS licensee seeking renewal or otherwise." It is critical that the FCC adopt this position if it allows an ITFS licensee's programming to be transmitted exclusively on channels licensed to some other entity.^{3/}

^{2/} The proposed rules also rephrase the ITFS minimum programming/reservation standard in Section 74.931(e)(2), applicable to ITFS stations leasing excess capacity, as "40 hours per week per channel" having to be "used for ITFS programming or reserved for recapture...." This was apparently meant to be a clarifying and not a substantive change. The ITFS Parties recognize, however, that the nature of and capacity available for ITFS purposes in the excess capacity lease context is an issue that the FCC has been asked to address separately by a Petition for Declaratory Ruling filed by the National ITFS Association. The ITFS Parties do not address that issue here, but assume that the rules adopted in this proceeding are not intended to foreclose, and would be subject to the outcome of, any FCC consideration of the NIA Petition.

^{3/} The ITFS Parties would still have some concern, however, that the FCC's tolerance for all ITFS programming of a licensee being on some other station's channels could be reviewed by the U.S. Court of Appeals in connection with an FCC license renewal dispute involving such an ITFS station.

5. Reversibility of ITFS Changes

The ITFS Parties are also concerned about what would happen if an excess capacity agreement comes to an end and the licensee has previously converted its channels to two-way or other uses not compatible with traditional ITFS operations (with some or all of its programming being transmitted on other licensees' channels). The essential problem is, once a system has been carefully engineered, approved, constructed and operated in a complicated system with boosters, cellularized transmissions, and two-way channels involving ITFS channels, can the former ITFS configuration, or some other acceptable traditional configuration, ever be put back together again in the event that the excess capacity arrangement expires or terminates?

The ITFS Parties urge the FCC to consider how to avoid a situation in which the ITFS licensee is potentially precluded in the future from using its channels for regular, downstream video ITFS service to receive sites, which has been the essential purpose behind the ITFS service from the beginning. There may be a variety of protecting future ITFS service, and the ITFS Parties would not preclude consideration of any possibility. However, at a minimum, the ITFS Parties urge the FCC to consider requiring that each ITFS licensee preserve at least one downstream video channel which, if operated digitally, would provide multiple program tracks for educational use.

In order to make this possible and still permit whole groups to be converted to return link use, the FCC should also consider a procedure by which it would routinely and ministerially grant applications by ITFS licensees to exchange individual ITFS channels between groups. Thus, for example, if a wireless cable operator proposes to use both the A and B groups in its system for return links, the A and B licensees would first be required to trade at least one of their

channels for channels on the C, D or G groups. The A licensee might then be licensed for A1, A2, A3 and C1. The B licensee might be licensed for B1, B2, B3 and D1. The C and D licensees would each be licensed on one A or B channel in addition to three C and D channels. This would permanently assure the A and B licensees of a channel that, in the event of the expiration or termination of their excess capacity arrangements, could be used for downstream transmission to receive sites. Obviously, this would require the consent of the C, D or G licensees, which consent would have to be procured by the system operator.

Conclusion

With the assumptions, reservations and modifications noted above, the ITFS Parties support the proposals made in the Petition and urge that the FCC institute a proceeding to consider adoption of appropriate rules.

Respectfully submitted,

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BEHALF OF THE UNIVERSITY OF
ARIZONA

BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM

CALIFORNIA STATE UNIVERSITY

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